IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.759 OF 2002

Deepak Revachand Talreja)
Age 59 years, at present lodged)
at Kalyan Central Prison, Pune,)
R/o. Dreamland Apartment, Flat)
No. 706, 7th Floor, Ulhasnagar)
Thane) ...Appellant

V/s.

State of Maharashtra ...Respondent

Mr.Arfan Sait, amicus curiae with Ms.Manjiri Parasnis for the Appellant

Smt.V.R. Bhosale, APP, for the Respondent- State.

CORAM : J.N. PATEL & A.A. SAYED, JJ.

RESERVED ON : 21st APRIL, 2007.

PRONOUNCED ON : 8th AUGUST, 2007.

ORAL JUDGMENT [Per A.A. Sayed, J]:

1. The above Appeal is preferred against judgment and order dated 28th June, 2002 of conviction passed by the Additional Sessions Judge, Kalyan, in Sessions Case No.112 of 1998 sentencing the Appellant, who was the accused in the Trial Court, to life imprisonment for offence punishable under Section 302 of the Indian Penal Code for the murder of his wife and to pay a fine of Rs.400/- , and in default to suffer R.I. for two months. The Appellant was also tried for offences punishable under Section 498(A) and Section 201 of the Indian Penal Code, in respect of which the Appellant was discharged, as no evidence was found on those counts by the Trial Court.

2. The prosecution's case in a nutshell is thus -The victim Heena @ Kavita Deepak Talreja (hereinafter called 'the deceased') and the Appellant were husband and wife and were married some time in the year 1994 and were residing at 706, 7th Floor, Dream Land Apartment, Gol Maidan, Ulhasnagar. It was a love affair which culminated into marriage between the Appellant and the deceased. After marriage, the Appellant-husband ill-treated the deceased and used to consume liquor and also beat her as the deceased did not conceive and did not give birth to a child.

The Appellant would also to demand money from the deceased and gamble and the deceased had informed her brother Prakash Bhojwani (PW-1) about the ill-treatment at the hands of the Appellant. On the day of fateful incident i.e. 04-02-1998, between 00.00 Hrs and 5.00 Hrs the Appellant committed the murder of the deceased, who was his wife, by strangulating her with a dupatta. The Appellant went to Dr. Dr.Naresh T. Hemnani (PW-3) who came to the flat and examined the deceased and did not notice any pulse or heart beat and noted that the deceased had died and also prepared a certificate that he found no pulse or heart beat or perspiration and declared the deceased to be dead and also informed the Appellant to call for his regular family physician and to inform the police. Thereafter at about 5 a.m. the Appellant made a phone call to Prakash Bhojwani PW-1, the brother of the deceased and told him that the deceased was not feeling well. PW-1 alongwith his wife rushed to the flat of the couple where the deceased and the Appellant were residing and found that the deceased was lying on the cot in an unconscious state. PW-1 tried to wake her up, but the deceased did not respond and PW-1 realized that she was dead. The Appellant told PW-1 that the deceased has committed suicide by hanging from the ceiling fan with the aid of a dupatta, which was found at the scene of the crime. PW-1 did not believe the Appellant and he called his parents to

the house of the Appellant.

3. The police recorded the complaint of PW-1 against the Appellant which was converted into FIR. From the scene of the crime the aforesaid dupatta, one steel box and one belt was also found. The police carried out the Spot panchnama and inquest panchnama and seized the incriminating articles and arrested the Appellant. The body of the deceased was sent for autopsy. The Appellant was referred for medical examination to Dr.Sunita S. Jagtap, PW-6, at the Central Hospital. Blood samples, clothes and nail clippings of the deceased and the Appellant were also sent to Chemical Analyser. After the entire investigations were carried out, including the recording of the statements, a charge-sheet came to be filed against the Appellant. The case was thereafter remitted to the Court of Sessions and the Appellant pleaded not guilty and claimed to be tried, on a charge being framed by the Sessions Court.

4. The plea of the Appellant was that he had gone to the house of his uncle Jairamdas Talreja in the night of 03-02-1998 as his uncle was not well and he had his dinner there and returned to his matrimonial home at about 3:30 a.m. to 4:00 a.m. He knocked the door; however his wife did not open the door and therefore he opened the door with a duplicate key and found his wife lying on the cot in an unconscious state

and that he alongwith one Kishore Narayandas Keshwani went to the hospital of Dr.Naresh Hemnani (PW-3), who came to the flat and examined the deceased and declared her dead and advised him to lodge a police complaint and accordingly he alongwith his elder brother Satan went to the police station at about 6:30 am and informed incident to the police who came to the flat. The Appellant was arrested and tried. In support of their case, the prosecution examined six witnesses, and on the basis of the available evidence, the Learned Trial Judge came to the conclusion that sufficient evidence was brought on record to prove the guilt of the Appellant and proceeded to convict and sentence the Appellant - hence this Appeal.

5. We have heard the Ld. Counsel for the Appellant and the Ld. APP for the State. We have also examined the record.

6. The learned Counsel appearing on behalf of the Appellant submitted that there are no eye witnesses examined by the prosecution and the case of the prosecution rests on circumstantial evidence, which are not reliable. The learned Counsel further submitted that the Appellant was not present at the time of the incident in the flat and had gone to his uncle Jairamdas Talreja's house. It was further urged that from the articles seized from the scene of the incident it was evident

that the deceased had committed suicide by hanging herself with the help of a duppatta from the ceiling fan. He further submitted that the medical evidence on record is not sufficient to prove that the Appellant caused the death of the deceased and that the report of the Doctor (PW-3), who examined the deceased immediately after the incident, did not reveal any marks or injuries on the body of the deceased and that it is only in the deposition before the Trial Court, that he stated that he found some marks below the chin and the neck of the deceased and that the theory of suicide cannot be ruled out and the defence of the Appellant cannot be disbelieved. It is further submitted that there was no motive and that the prosecution has not adduced any evidence establishing the motive or reason why the Appellant would commit the murder of his wife. It is further submitted that the deceased was taking treatment to conceive and therefore the prosecution's case regarding ill-treatment on account of non-conception to give birth to a child was not true. It is further submitted that in the FIR it is not stated that the deceased had informed PW-1 about the ill-treatment meted out by her through the Appellant and PW-1 has admitted that no complaints have been filed against the Appellant in respect of ill-treatment by the Appellant against the deceased either by PW-1 or the deceased. Thus, according to the Ld. Counsel for the Appellant, no motive is established and the allegations of

murder ought to have been disbelieved by the Trial Court.

7. The learned Counsel for the Appellant further submitted that the suggestion put forth in the cross-examination in the Trial Court by the Advocate of the Appellant to Rajkumari Navani PW-4, that the deceased had illicit relation with some other person has been wrongly interpreted by the Trial Court as motive for the crime on part of the Appellant. It was urged before us that the learned Trial Judge has erroneously held that the Appellant murdered his wife as she had illicit relation with another man. According to the learned Counsel for the Appellant no evidence in this regard has been adduced by the prosecution. According to the learned Counsel for the Appellant, it was possible that she may have committed suicide as she was dissatisfied with her marriage and she was involved with another person and this fact cannot be ruled out. The learned Counsel further submitted that Trial Court has wrongly held that the deceased was last seen in the company of the Appellant. According to the learned Counsel for the Appellant if indeed the Appellant had tried to strangulate the deceased, there would have been a scuffle and there would be more abrasion marks on the Appellant instead of that one small injury and that the deceased would have shouted for help.

8. Per contra, the ld APP has supported the Trial Court judgment and its findings in toto.

9. The crucial question which arises for our consideration is whether the death was suicidal or homicidal and whether there is any circumstantial evidence to hold the Appellant guilty of murder of the deceased and that none else could have been responsible for causing the death of the deceased on the intervening night of 3rd and 4th February, 1998 between 00.00 Hrs and 5.00 Hrs and whether the Trial Court came to the right conclusion in convicting the Appellant.

10. The prosecution, as stated earlier, has examined six witnesses. Prakash B. Bhojwani- PW 1, who is the complainant, is the elder brother of the deceased. He has deposed that the Appellant used to ill-treat and beat the deceased, as she did not conceive and that he used to consume liquor, demand money from the deceased and used to gamble. On the day of incident at about 5 a.m., the Appellant called up PW-1 saying that the deceased was not feeling well and therefore, PW-1 and his wife rushed to the house of Appellant and they found that the deceased was lying on the cot and when PW-1 tried to wake up the deceased, she did not respond and he noticed that the deceased was dead. The Appellant thereupon disclosed to PW-1 that the deceased had committed suicide by hanging

with the help of her Duppatta from the fan. PW-1 did not believe the story of the Appellant and suspected him to have murdered the deceased and he therefore filed a complaint. In the complaint PW 1 has stated that on 3-2-1998, the deceased and Appellant had both come to the house of PW 1 and left around midnight. In cross-examination of PW 1 it has come on record that the deceased was taking treatment so as to conceive and have a child. It was also suggested in the cross examination of PW 1 that the deceased was prone to commit suicide. PW 1 has admitted that there was no complaint filed either by PW 1 or deceased against the Appellant with the police at any time, prior to the complaint of PW 1.

11. Kishore Mohandas Keswan- PW 2, who is residing in the same building was examined by the prosecution as a panch and he has deposed that he found the dead body of one woman on the cot and the police had taken measurement of the room in the flat and also found one steel box, one Dupatta lying on the bed on the spot and he has identified the muddemal property, which is at Exh. 22.

12 The prosecution has examined one Dr. Naresh T. Hemnani- PW 3, who is a medical practitioner at Ulhasnagar. He has deposed that around 4.30 a.m., 2 persons came to him and requested him to come to their house as the wife of one of

the persons was serious. PW-3 has deposed that he came to the flat and examined the deceased and he did not notice any pulse, blood pressure or heart beat and informed those persons that the deceased was dead and advised them to inform the incident to the police. He issued a certificate, declaring that deceased was dead and stated in the certificate that they should inform their family physician, as he was not their regular physician and to inform the police. He has stated in his deposition, that he saw some mark behind the chin, neck of the deceased and further stated that the death might have been caused due to strangulation. In the cross-examination he has deposed that the Appellant alongwith a neighbour had come to call him. He has admitted that in the certificate (Exh. 26), he has not mentioned about any mark on the neck of the deceased.

13. The prosecution then examined one Rajkumari K. Navani -PW 4, who was the neighbour of the deceased and the Appellant at the relevant time. The witness Rajkumari, however did not support the prosecution and was therefore declared hostile and was cross examined by the learned APP. In her cross-examination, she has stated that on 3-2-1998 Appellant and the deceased at about 11 p.m., met her near the lift of the building. This witness has denied certain portions from her police statement which were put to her. This witness

has also been cross examined by the advocate for the Appellant and she has deposed that she is staying in flat No. 703 of Dreamland Apartment and has denied that the deceased was her friend. She has stated that she did not know anything about the incident and therefore, was not inclined to attend the Court. She has deposed that she had never visited the flat of the deceased.

14. The prosecution then examined Shri Vilas S. Lokhande - PW 5, who was the senior P.I., Ulhasnagar and who had taken charge on 26th March 1998 from PI Shri Taktode, who was his predecessor. He has deposed that Shri Taktode had sent muddemal property-clothes and blood samples of the deceased and the Appellant to the Chemical Analyst. He has deposed that he has received C.A. Report on 20-6-1998. The C.A. Reports produced by him are at Exhs. 32, 33 and 34. In the cross-examination, he has stated that PI Taktode had referred the Appellant to medical officer for taking blood sample.

15. The prosecution has also examined one Dr. Sunita S. Jagtap - PW 6, who is a medical officer at Ulhasnagar, who is the key witness in the present case. She has deposed that on 4-2-1998 i.e. the day of incident, she was on duty and that the PSI of Ulhasnagar referred the body of the deceased for

autopsy to her and that she had carried out autopsy on the dead body of the deceased and issued the post mortem Report. She has deposed that the eyes of deceased were closed showing patechial haemorrhagic, tongue swollen, bruised and bitten by teeth, blood stained discharge through the ear and she noticed the following external injuries-

(i) ligature marks seen just below the thyroid cartilage encircling the neck completely.

(ii) 2 bruises just below the chin seen 7 x 1 cm each.

(iii) Subcutanem tissue ecchymosed, bleeding from ear seen.

16. She has further deposed that she found a brain matter congested and also found fracture of larynx and tracheal ring, right and left lung congested, heart congested and full of blood, as noted by her in Column No.20 of the post mortem Report. She found stomach congested and found semi digested food. She found small and large intestines congested and loaded with faecal matter. Liver gall bladder, pancreas, spleen, kidney were congested. Bladder was empty. She did not find fracture of cervical spine.

17. PW-6 has opined that cause of death of the deceased was cardiorespiratory failure due to asphyxia due to strangulation. The post mortem report is at Exh.37. She has

further deposed that the police had referred the Appellant to the Central Hospital for medical examination and she accordingly examined the Appellant and she found one injury i.e. abrasion on left side of neck anterior angle 2 x 1 cm on the person of the appellant and the age of the injury was within 24 hours, caused by a hard and blunt object and that it may have been possible by nails or fingers. Accordingly, she has issued the certificate which is at Exh. 38.

18. It would be relevant at this juncture to examine some provisions of the Indian Evidence Act 1872 ('IEA' for short) governing burden of proof and some legal principles as held by the Hon'ble Supreme Court.

19. Section 106 of the IEA provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This is an exception to the general rule contained in section 101 namely that the burden is on the person who asserts a fact. The principle underlying Section 106 which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within the knowledge of the opposite party.

20. In the case of Trimukh Maroti Kirkan Vs. State of Maharashtra - (2006) 10 Supreme Court Cases 681, the Apex Court whilst relying upon section 106 of the IEA, observed - "when an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation''. The Apex Court has further held that "in a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstance to make it complete''. The Apex Court has further held that, "where an

accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the Appellant does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime". The Apex Court observed that, "the medical evidence showed that she had died on account of asphyxia due to strangulation. The body of the deceased was purposely placed in a sitting posture with her back taking support of the wall so that no one may suspect that she had actually been killed as a result of strangulation and may believe the version of snakebite given by the appellant and his parents. The appellant in his statement under Section 313 Cr.P.C. did not offer any explanation as to how she received the injuries which were found on her body. Recovery of some articles of the deceased was made at the pointing out of the appellant. The circumstance unerringly point out the guilt of the appellant and they are inconsistent with his innocence".

21. On the interpretation of Section 106 of the Indian Evidence Act, 1872 we may refer to the classic case of

Shambhu Nath Mehra Vs. State of Ajmer reported more than half a century ago in AIR 1956 SC 404 wherein in paragraph 11, Their Lordships have observed thus-

> 'This lays down the general rule that in a criminal case the burden of proof is on the prosecution and S.106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

22. In the case of State of West Bengal vs. Mir Mohammad Omar and others reported in AIR 2000 Supreme

Court 2988 the Hon'ble Supreme Court observed in paras 31 to 33 as under:

> "31. The prestine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.
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> 32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the Court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

> 33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.''

23. In the case of Ganeshlal Vs. State of Maharashtra - (1992) Cri.L.J.1545 , the Apex Court whilst dealing with "motive" observed "in circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the

motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. Even in the case of circumstantial evidence, absence of motive which may be one of the strongest links to connect the chain would not necessarily become fatal, provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from the proved circumstances.''

24. In the case of Brijlala Pd. Sinha v. State of Bihar - AIR 1998 SC 2443, whilst dealing with the issue of alibi, it was laid down by the Apex Court that "the burden of proving the plea of alibi by positive evidence lies on the accused who raises it".

25. In the case of Vijaya Singh v/s. State of U.P. - (1990) 3 SCC 190, a 3 Judge Bench of the Hon'ble Supreme Court in para 33, has held that "...circumstances leading to alibi are within his knowledge and as provided under Section 106 of the Act, he has to establish the same satisfactorily.''

26. In the case of Chandrashekharappa Vs. State of Karnataka - (2003) 11 Supreme Court Cases 299, it was observed by the Hon’ble Supreme Court that the wife was found with a mark of ligature round her neck and the accused and the deceased were the only two insiders of the house at the material point of time when the deceased met with her unnatural death by strangulation and the accused took the plea of alibi. It was held by the Hon'ble Supreme Court - "...in such circumstances, it was for the accused to explain how the deceased met with her death and his own conduct, which the accused has failed to do. The Trial Court and the High Court have rightly held that the chain of circumstantial evidence forged from the evidence adduced by the prosecution is enough for fastening the guilt on the accused beyond any reasonable doubt. He has been rightly held guilty for intentionally causing the death of his wife, Annapurnaamma''. The Apex Court also held that that "the trial Court and the High Court has rightly discarded the plea of alibi taken by the accused as untrustworthy''.

27. In the case of Babu s/o Raveendran Vs. Babu s/o Bahuleyan and another - (2003) 7 Supreme Court Cases 37 the Hon’ble Supreme Court it was held - "it was for the husband alone to explain the circumstances leading to the death of the wife and the circumstantial evidence of last seen

together. The circumstantial evidence against the accused is that the accused and the deceased were last seen together. Last seen together in legal parlance ordinarily refers last seen in the street, at a public place, or at any place frequented by the public. But here, the last seen together is much more than that. The last seen together here is sleeping together inside the bolted room". It is further held by the Apex Court that "the Appellant and the deceased were closeted inside the room. There is no evidence of an intruder. In such a situation, the circumstances leading to the death of the deceased are shifted to the accused. It is he who knows in what manner and in what circumstances, the deceased had met her end and as to how the body with strangulation marks found its way into a nearby well. All the aforesaid circumstances taken together cumulatively lead an unerringly point only to the guilt of the accused."

28. In the case of Swapan Patra & Ors. Vs. State of W.B. (1999) 9 Supreme Court Cases 242, it was held - "it is well settled that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances to complete the chain." Applying the aforesaid principle, it held "that the circumstances established in the case completes the chain of circumstances to prove the

charge of murder against appellant husband and, therefore, his conviction has to be upheld under Section 302 IPC."

29. The evidence in the instant case is to be examined on the touchstone of the above mentioned provisions of law and principles as laid down by the Apex Court.

30. In the present case, however, the foremost question which arises in our mind is that if it is a case of suicide by hanging, how is it that the body of the deceased with ligature marks was found lying on the cot and not found in hanging position? This one fact itself completely demolishes the case of the Appellant that the deceased had committed suicide by hanging from the ceiling with the aid of a duppatta.

31. We find that the evidence of Dr. Sunita S. Jagtap, PW-6, who is the Medical Officer, Central Hospital, Ulhasnagar and who has carried out the autoposy on the body of the deceased, is decisive in the facts of the present case. We have therefore at the cost of being repetitive reproduced her evidence and findings hereinbelow. In her evidence, as mentioned earlier, she has opined that the death was caused by cardiorespiratory failure due to asphyxia due to strangulation. She has deposed that the eyes of deceased were closed showing patechial haemorrhagic, tongue swollen,

bruised and bitten by teeth, blood stained discharge through the ear and she noticed following ante-mortem external injuries-

(i) ligature marks seen just below the thyroid cartilage encircling the neck completely.

(ii) 2 bruises just below the chin seen 7 x 1 cm each.

(iii) Subcutanem tissue ecchymosed, bleeding from ear seen.

32. She has further deposed that she found a brain matter congested and also found fracture of larynx and tracheal ring, right and left lung congested, heart congested and full of blood, as noted by her in Column No.20 of PM report. She found stomach congested and found semi digested food. She found small and large intestines congested and loaded with faecal matter. Liver gall bladder, pancreas, spleen, kidney were congested. Bladder was empty. She did not find fracture of cervical spine. The post mortem report is at Exh.37.

33. PW-6 has further deposed that the police had referred the Appellant to the Central Hospital for medical examination and she, therefore examined the Appellant and she found one injury i.e. abrasion on left side of neck anterior angle 2 x 1 cm and the age of the injury was within 24 hours, caused by hard and blunt object and that it may have been

possible by nails or fingers. Accordingly, she has issued the certificate which is at Exh. 38.

34. Nothing is brought in the cross-examination to discredit that observations of the Dr. Sunita S. Jagtap (PW-6) and her evidence and findings remain unshaken that the cause of death of the deceased was cardio respiratory failure due to asphyxia due to strangulation.

35. Let us now examine the words asphyxia, ligature mark, strangulation and hanging from the medico-legal point of view. In Butterworths Medico Legal Encyclopaedia by J.K. Mason and R.A. Mc Call-Smith, 1997 Edn., "Asphyxia" is defined as a means of preventing oxygenation of the tissues - or as a method of rendering the tissues hypoxic (Hypoxic is the condition of the body when it is supplied with insufficient oxygen for its need).

36. Dealing with asphyxia, the authors further elaborate that the most important forms of asphyxia from the point of view of forensic medicine are those which are unnatural. The mechanical means of this type can be summarized as under:

Obstruction at :	
the nose and mouth	suffocation
the larynx	choking; throttling; strangulation (garotting); or hanging
the trachea	aspiration (inhalation) of foreign substances; including drowning
or of inhibition of chest movements	traumatic asphyxia

37. Ligature mark is defined in Parikh's textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, 6th Edn. as a pressure mark on the neck at the site of the ligature. In this book, hanging is defined as a form of violent asphyxia as a result of suspension of the body by a ligature round the neck, the constricting force being the weight of the body. The ligature constricts the neuro-vascular bundles in the neck and/or the upper airways. In hanging, the ligature mark is situated above the level of thyroid cartilage between the larynx and chin. It is directed obliquely upwards along the line of the mandible and reaches the mastoid process behind the ears.

38. Strangulation, on the other hand, is defined by Dr.Parikh as a form of violent asphyxia caused by constricting

the neck by some means other than body weight. The means used may be a ligature, the hand (throttling), the elbow (mugging or choke-hold), or some heart object such as a stick (bansdola).

39. In ligature strangulation, as Dr.Parikh explains, injuries to deeper tissues of neck are more common than in hanging, as a result of considerable force which is used. The subcutaneous connective tissue under the ligature mark is usually ecchymosed. The neck muscles, laryngeal, tracheal rings and carotid arteries may be injured. The superior horns of thyroid cartilage are commonly fractured but the hyoid is rarely injured, due to the level of constriction being below this bone, unless considerable violence is applied to neck.

40. It is further pointed out in the said book that the medicolegal questions likely to arise in a case of strangulation are 1) whether death was due to strangulation and 2) whether it was suicidal, homicidal or accidental. Homicidal strangulation is common form of murder. In fact, strangling should be assumed to be homicidal until the contrary is proven to be more likely under the circumstances. Extensive injuries to the neck are far more than is necessary to cause death. Homicidal strangulation may be committed with such silence that even persons in close vicinity may not be aware of

the act since sudden and violent compression of windpipe renders a person powerless to raise an alarm or call for assistance.

41. This book of Dr.Parikh very lucidly brings out the differences between hanging and strangulation which is reproduced hereunder:

DIFFERENCES BETWEEN HANGING AND STRANGULATION

Trait	Hanging	Strangulation by ligature
(1) Ligature mark: encircling	It is oblique, does not completely encircle the neck; usually seen high up in the neck between the chin and larynx. The base is pale, hard and parchment-like.	It is transverse, completely the neck below the thyroid cartilage. The base is soft and reddish.
(2) Abrasions and ecchymoses :	About the edges of ligature mark not common.	About the edges of the ligature mark are common.
(3) Bruising :	Of the neck muscles less common.	Of the neck muscles more common.

(4) Neck :	Stretched and elongated.	Not stretched or elongated.
(5) Subcutaneous tissues :	White, hard and glistening under the mark.	Ecchymosed under the mark.
(6) Hyoid bone :	Fracture may occur.	Fracture is uncommon.
(7) Thyroid cartilage :	Fracture is less common.	Fracture is more common.
(8) Larynx and trachea :	Fracture rare.	Fracture may be found.
(9) Emphysematous bullae :	Not present on the surface of the lungs.	Very common on the surface of the lungs.
(10) Carotid arteries :	Damage may be seen.	Damage is rare.
(11) Face :	Usually pale and petechiae are not common.	Congested, livid and marked with petechiae.
(12) Signs of asphyxia :	External signs less marked.	External signs well-marked.
(13) Tongue :	Swelling and protrusion is less marked.	Swelling and protrusion is more marked.
(14) Saliva :	Often runs out	Absent.

		of mouth.	
(15)	Bleeding :	From the nose, mouth and ears not common.	From the nose, mouth and ears common.
(16)	Involuntary discharge :	Of faeces and urine less common.	Of faeces and urine more common.
(17)	Seminal fluid :	At glans is more common.	At glans is less common.

42. A bare comparison of the above tabulated differences more particularly item nos. 1, 2, 3, 5, 8, 11, 15, with the evidence and findings of the post mortem report of Dr. Sunita S. Jagtap in the present case as mentioned in paras – 15, 16 & 17 hereinabove will establish that the death in the present case was due to strangulation by ligature as opposed to hanging.

43. In the instant case, the spot panchnama indicates that the ceiling fan is intact and good condition and is in working state and there is no scratch or dent of any kind whatsoever seen on the fan. The spot panchnama also records that the there is no mark or sign on the steel bolt and latch on the bedroom door showing that any attempt was made to open the door forcibly - thus ruling out the presence of any intruder. The spot panchnama further states that the following articles

were seized from the scene of the crime viz: one steel round shaped tin, one dupatta and one rubber belt with buckle. The inquest panchnama reveals injury marks below the chin and the ligature mark on the neck of the deceased. The Senior Inspector, Ulhasnagar (PW-5) has deposed that his predecessor from whom he took charge of the investigation, had sent muddemal property viz: clothes of the deceased and the Appellant and the blood samples of the deceased and the Appellant to the Chemical Analyser. Ex 32, which is the Chemical Analyser's report reveals that the night gown and inner wear (knickers) of the deceased and the shirt of the Appellant contained blood stains. The other report of the Chemical Analyser, which is Ex 33 discloses that human blood was detected in the nail clippings of the deceased, however the blood group results of the same were inconclusive. The Histopathology Report, which is at Ex 34, interalia reveals congestion of kidney, spleen, heart, lung blood vessels.

44. As discussed above, the version of the Appellant in the Trial Court was that the deceased committed suicide by hanging with the aid of a dupatta. In para 3 of the Memo of Appeal the case of suicide is reiterated by the Appellant. Though case of the Appellant is that the deceased has committed suicide with the help of dupatta by hanging herself,

there is no explanation by the Appellant as to how then she was found lying on the cot, instead of hanging position.

45. A plea of alibi is taken by the Appellant and the case of the Appellant in his statement under sec 313 of CrPC is that he was not present at the time of incident in the flat and that he had gone to his uncle's house, who was unwell and came back between 3.30 to 4.00 am and found the deceased lying on the cot. The Appellant has not examined his Uncle in support of his case of alibi. Moreover, in the evidence of PW-4 Rajkumari Navani, it has come on record that she saw the deceased and the accused at 11 pm on 3-02-98, near the lift of the building and they disclosed to her that they had returned from the temple. PW-4 has not been confronted with this statement in the cross-examination by the Ld. Advocate of the Appellant in the Trial Court.

46. The Appellant has not explained the injury which has been found on his own person. There is also no explanation how there were blood stains on the gown and inner wear of the deceased. The Appellant has not explained the blood stain on his shirt, which was seized and sent for chemical analysis. Thus the version of alibi is completely belied and untrustworthy and the conduct of the Appellant is questionable and the Trial Court has rightly rejected the plea

of alibi of the Appellant. The false plea of alibi set up by the Appellant coupled with failure to explain the circumstances of the death of the deceased, who was his wife and with whom the Appellant resided alone in the flat and with whom he was last seen together becomes an additional link in the chain of circumstances to make it complete and unerringly pointing to the guilt of the Appellant. The ligature mark encircling the neck of the deceased and the dupatta recovered from the scene of the crime clearly indicates the use of dupatta to strangulate the deceased. We find that in the special facts and circumstances of this case the Appellant has failed to discharge his burden under Section 106 of the Indian Evidence Act which he was bound to do.

47. Insofar as the contention of the Counsel for the Appellant that Dr. Naresh Hemnani (PW-3) had failed to mention the injuries on the neck of the deceased in his certificate, we find that mere omission of this doctor to mention the injuries on the neck of the deceased would in no way help the case of the Appellant. PW-3 is the Doctor who had come to the flat between 00.00 Hrs to 5.00 Hrs on 4-02-98 at the request of the Appellant and examined the deceased and issued a certificate that the deceased had died. It has further come on record in the certificate issued by the said doctor (PW-3) that he informed them that they should inform their family

physician and police. As discussed above, the inquest panchnama and the post mortem report have clearly established the injuries on the person of the deceased. We, therefore, find no merit in this contention.

48. As regards the contention of the Counsel for the Appellant that the motive for the murder has not been established, we find that the Trial Court has inferred motive from the suggestions of the Ld Advocate of the Appellant in the cross examination before the Trial Court. Be that as it may, we find that in the instant case, the circumstantial evidence is overwhelming and absence of establishment of motive, cannot, in any event, help the case of the Appellant. As held in the aforementioned case of Ganeshlal vs. State of Maharashtra, proof of motive is never an indispensable factor for conviction. Moreover, in the present case, when the victim and the accused are husband and wife, there may be things which are specially within their knowledge and the fact that the husband may have found the wife to be having an illicit relationship as held by the Trial Court, based on the suggestions to the Appellant in the cross examination by the Ld. Counsel for the Appellant, cannot be ruled out. However it was for the accused to explain the facts which were specially within his knowledge which he has failed to do and has failed to discharge his burden. This contention too, therefore, has no merit and is

rejected. So far as the contention of the Ld Counsel for the Appellant that if at all there had been a scuffle the deceased would have shouted for help, we do not find any substance in this contention also as failure to raise an alarm would not necessarily mean that there was no scuffle. As stated in Parikh's textbook of Medical Jurisprudence, Forensic Medicine and Toxicology referred to above, homicidal strangulation may be committed with such silence that even persons in close vicinity may not be aware of the act since sudden and violent compression of the windpipe renders a person powerless to raise an alarm or call for assistance. Moreover the injury marks on the person of the deceased and the accused in the instant case are clearly established, which point to the scuffle between them.

49. We therefore find that the death of the deceased was homicidal and the facts and circumstance of the case establish the presence of the Appellant at the crucial time at the flat and the Appellant had the opportunity to commit the crime. The injury on the person of the Appellant and blood stain on the shirt of the Appellant are suggestive of the Appellant being present in the flat. Thus, circumstantial evidence coupled with failure of the Appellant to explain the circumstances of the death of the deceased who was his wife and was in his custody and the false plea of alibi put up by the Appellant leads to

irresistible inference of guilt of the Appellant. The distance between "may be true" and "must be true" is fully covered by reliable circumstantial evidence adduced by the prosecution in the present case and we find that the theory of suicide set up by the appellant was clearly an afterthought.

50. In the present case we find that the evidence satisfies the following tests :

a) the circumstances from which the inference of guilt is drawn, is cogent and firmly established;

b) those circumstances are of a definite tendency unerringly pointing towards the guilt of the Appellant;

c) the circumstances, taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Appellant and none else; and

d) the circumstantial evidence is complete and incapable of explanation of any

other hypothesis than that of the guilt of the Appellant and such evidence is not only consistent with the guilt of the Appellant, but is inconsistent with his innocence. [State of Goa Vs. Sanjay Thakran (2007) 3 SCC 755]

51. We accept the findings of the trial Court that the charge under section 302 has been duly established against the Appellant and the trial Court has rightly held that the author of the murder of the deceased is none other than the Appellant.

52. In the result, we do not find any merit in the appeal and dismiss the same. The Appellant to serve his sentence.

Sd/-
(A.A. Sayed J.)

Sd/-
(J.N. Patel J.)